

JOHNSON

Fax:7325245575

Jul 15 2004 1:29

P.01

**RECEIVED
CENTRAL FAX CENTER**

JUL 15 2004

OFFICIAL

JOHNSON & JOHNSON
CORPORATE HEADQUARTERS
PATENT LAW DEPARTMENT
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NEW JERSEY 08933-7003

FACSIMILE TRANSMISSIONS COVERSHEET

DATE: July 15, 2004

RECEIVED

JUL 19 2004

OFFICE OF PETITIONS

TO: OFFICE OF PETITIONS

COMPANY:

FACSIMILE NO.: 703-872 9306

FROM: Brian S. Tomko

TELEPHONE NO.: (732) 524-1239

FACSIMILE NO.: (732)-524-5575

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 10

Serial No. 09/982,502

HRT 279

Renewed Petition to Accept an Unintentionally Delayed Claim of Priority (1 page)
Amendment (8 pages)

CONFIDENTIALITY NOTICE

THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE SOLELY TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

116

Docket No. HRT0279

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Boyd et al.

Serial No. : 09/982,502

Art Unit : 3738

Filed : October 18, 2001

Examiner : D. Isabella

Title : Devices & Methods for Port-Access Multivessel Coronary
Artery Bypass Surgery**RECEIVED**

JUL 19 2004

OFFICE OF PETITIONSCERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being faxed to the
United States Patent & Trademark Office at (703) 872-9306 on July 15, 2004


Brian S. Tomko

(Name of applicant, assignee, or Registered Representative)

Honorable Commissioner of Patents
Mail Stop Petition
Alexandria, VA 22313

RENEWED PETITION TO ACCEPT
AN UNINTENTIONALLY DELAYED CLAIM OF PRIORITY

Dear Sir:

This Renewed Petition is made in response to the Office Action dated Decision on Petition dated July 1, 2004, wherein Commissioner denied the Petition filed on January 14, 2004, for improperly incorporating by reference prior-filed applications in the amendment appended to the original Petition. Applicants have deleted the incorporation by reference sentence in the appended Amendment and request that the Commissioner grant the Petition.

Please charge any additional surcharge or fee that is required in connection with this petition to Account 10-0750/HRT-279/BST.

Please feel free to contact me, if anything further is required at (732)524-1239.

Respectfully submitted,

Dated: July 15, 2004

By: 

Brian S. Tomko
Reg. No. 41,349

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-1239
(732) 524-5575 (fax)

OFFICIAL

Docket No. HRT-0279

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
CENTRAL FAX CENTER**

JUL 15 2004

Applicants : Stephen W. Boyd et al.
Serial No. : 09/982,502 Art Unit : 3738
Filed : October 18, 2001 Examiner : D. Isabella
Title : Devices and Methods for Port-Access Multivessel Coronary Artery Bypass Surgery

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being filed to the
United States Patent & Trademark Office at (703) 872-9306 on July 15, 2004


Brian S. Tomco

(Name of applicant, assignee, or Registered Representative)

RECEIVED

JUL 19 2004

OFFICE OF PETITIONS

Honorable Commissioner of Patents
Alexandria, VA 22313

AMENDMENT

Dear Sir:

In connection with the Renewed Petition to Accept an Unintentionally Delayed Claim of
Priority filed on this date, please consider the following:

An amendment to the specification begins on page 2 of this document.

A list of the claims begins on page 3 of this document.

Remarks begin on page 7 of this document.

Serial No. 09/982,502

HRT 279

Please replace the first paragraph of page 1 of the specification with the following:

This application is a divisional of U.S. Patent Application Serial No. 09/487,024, filed January 19, 2000, now issued as U.S. Patent No. 6,494,211, which is a continuation of U.S. Patent Application Serial No. 09/019,014, filed February 5, 1998 now abandoned, which is a division of U.S. Patent Application Serial No. 08/486,941, filed June 7, 1995, now U.S. Patent No. 5,799,661, which is a continuation-in-part of copending U.S. Patent Application Serial No. 08/281,891, filed July 28, 1994, now U.S. Patent No. 5,735,290, which itself is a continuation-in-part of copending U.S. Patent Application Serial No. 08/023,778, filed February 22, 1993, now U.S. Patent No. 5,452,733. The complete disclosures of these related U.S. patent applications are hereby incorporated herein by reference for all purposes.

Serial No. 09/982,502

HRT 279

1. (Original) A method of cardiac surgery on a heart within a chest of a patient, the chest having a sternum and a plurality of ribs, each rib being separated from an adjacent rib by an intercostal space, the method comprising the steps of:

making at least one access port into the chest through an intercostal space, a first aspect of the heart facing the access port, and a second aspect of the heart facing away from the access port;

introducing a retraction instrument through the access port; and

manipulating the retraction instrument to reposition the heart within the chest into a retracted position wherein the second aspect of the heart is facing the access port;

wherein the ribs and sternum remain intact during each of said steps.

2. (Original) The method of claim 1 wherein the access port is made in a left lateral portion of the chest and wherein the first aspect of the heart comprises a left lateral aspect.

3. (Original) The method of claim 2 wherein the second aspect of the heart comprises an aspect of the heart selected from a posterior aspect, a right lateral aspect, and an anterior aspect.

4. (Original) The method of claim 1, further comprising the step of:
visualizing the heart with a visualization instrument introduced into the chest of the patient through a second access port positioned within an intercostal space.

5. (Original) The method of claim 1, further comprising the step of:
anastomosing a vascular graft onto a coronary artery on the heart while the heart is in the retracted position.

6. (Original) The method of claim 5, wherein the anastomosing step comprises the substep of introducing an anastomosing instrument into the chest of the patient through an access port within an intercostal space.

7. (Original) The method of claim 5, wherein the anastomosing step comprises anastomosing the vascular graft onto a circumflex artery.

Serial No. 09/982,502

HRT 279

8. (Original) The method of claim 5, wherein the anastomosing step comprises anastomosing the vascular graft onto a right coronary artery.
9. (Original) The method of claim 5 wherein the anastomosing step comprises anastomosing the vascular graft onto a posterior descending coronary artery.
10. (Original) The method of claim 5, wherein the vascular graft is selected from the group including a left internal mammary artery, a right internal mammary artery, a gastroepiploic artery, a radial artery, a saphenous vein, and a prosthetic vascular graft.
11. (Original) The method of claim 5 further comprising the step of:
dissecting an internal mammary artery from an anterior wall of the patient's chest: and
wherein the anastomosing step comprises anastomosing the internal mammary artery onto the coronary artery.
12. (Original) The method of claim 5, further comprising the step of:
anastomosing a second vascular graft onto a second coronary artery using an anastomosing instrument introduced through an access port within an intercostal space.
13. (Original) The method of claim 12 wherein the second vascular graft is selected from the group including a left internal mammary artery, a right internal mammary artery, a gastroepiploic artery, a radial artery, a saphenous vein, and a prosthetic vascular graft.
14. (Original) The method of claim 13 wherein the second coronary artery comprises a left anterior descending coronary artery.
15. (Original) The method of claim 13 wherein the second coronary artery comprises a circumflex artery.
16. (Original) The method of claim 13 wherein the second coronary artery comprises a right coronary artery.

Serial No. 09/982,502

HRT 279

17. (Original) The method of claim 12 further comprising repositioning the heart into a second retracted position using said retraction instrument before the step of anastomosing a second vascular graft.
18. (Cancelled)
19. (Original) The method of claim 1 wherein the manipulating step comprises the substep of lifting the heart with a rigid finger on the retraction instrument.
20. (Cancelled)
21. (Original) The method of claim 1 wherein the manipulating step comprises rotating the heart.
22. (Original) The method of claim 21 wherein the heart is rotated about an axis extending longitudinally through the heart from an aortic root generally toward an apex of the heart.
23. (Original) The method of claim 21 wherein the heart is rotated about an axis disposed at an acute angle between 0° and 90° relative to a longitudinal axis extending from an aortic root toward an apex of the heart.
24. (Original) The method of claim 1, further comprising the step of:
partitioning an ascending aorta of the patient, paralyzing the heart, and maintaining circulation of oxygenated blood in the patient.
25. (Original) The method of claim 24 wherein the partitioning step comprises the substep of introducing an intraluminal occlusion device into a peripheral artery of the patient, transluminally advancing the intraluminal occlusion device into the ascending aorta and occluding the ascending aorta between the patient's coronary ostia and brachiocephalic artery.

JOHNSON.

Fax:7325245575

Jul 15 2004 1:30

P.08

Serial No. 09/982,502

HRT 279

26-149. (Cancelled)

Serial No. 09/982,502

HRT 279

REMARKS

Claims 1-17, 19 and 21-25 are pending in this application. 18, 20 and 26-44 are canceled.

The Examiner rejected claims 1-6, 19, 21-25 under 35 U.S.C. § 102(b) as being anticipated by Benetti (U.S. Patent No. 5,894,843) and further rejected claims 7-17 under 35 U.S.C. § 103(a) as being nonpatentably obvious over Benetti. The Examiner correctly points out that "Applicant's earliest priority dates back to the divisional filed on January 19, 2000", and that the "claimed subject matter is not disclosed in the CIP 08/281891 and the CIP 08/023778." While the claimed subject matter was not disclosed in the earliest priority applications, it was disclosed in related applications filed between the cited CIPs and this application's parent. Applicants failed, however, to claim priority within the prescribed time period under 37 C.F.R. § 1.78 to the applications filed between CIP 08/281891 and the parent application, U.S. Patent Application Serial No. 09/487,024. As a result, Benetti, which was filed prior to the parent application, but after applications that this application should have claimed priority, is currently considered prior art against the current application.

To correct this oversight, Applicants have filed a Renewed Petition to Accept an Unintentionally Delayed Claim of Priority on this date, a copy of which is attached. The correct priority is listed above as an amendment to the specification. Once the Petition Branch acts on the attached Petition, Benetti will no longer be citable as prior art as this application properly claims priority to U.S. Patent Application Serial No. 08/486,941, filed June 7, 1995 (now U.S. Patent No. 5,799,661), which discloses the claimed subject matter and is prior to Benetti (filed February 20, 1996). At that point, Applicants request that the Examiner withdraw the rejections and allow the pending claims.

In the event that it becomes necessary to charge additional extension fees or any additional charge, Applicants hereby grant the Commissioner permission to charge the Deposit Account No. 10-0750/HRT279/BST.

Serial No. 09/982,502

HRT 279

If the Examiner believes that a discussion of the pending claims would expedite the prosecution of this application, he is invited to contact the undersigned.

Respectfully submitted,

By: 

Brian S. Tomko
Reg. No. 41,349

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-1239
Dated: July 15, 2004